IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.MC.No. 649 of 2007()

CMP.605/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, KANJIRAPPALLY

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PETITIONER:

SHIJO GEORGE, S/O.A.G.GEORGE,
ALACKAL PARAMPIL, KANAMALA, ERUMELY.

BY ADV. SRI.P.H.SHAJAHAN
SRI.P.A.MOHAMMED SHAH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB-INSPECTOR OF POLICE, ERUMELI,
KOTTAYAM DISTRICT.

3. VILLAGE OFFICER, ERUMELI SOUTH VILLAGE,
ERUMELI.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.649 of 2007

Dated this the 21st day of March 2007

O R D E R

The petitioner is aggrieved by the dismissal of his application under Section 457 Cr.P.C. A vehicle bearing Reg.No.KL-7/D 7720 belonging to the petitioner has been seized on the allegation that it is involved in illicit transportation of river sand. The vehicle is now in the custody of the police. No action has been taken against the petitioner by the Village Officer or the District Collector so far. The petitioner, in these circumstances, applied before the learned Magistrate for release of the vehicle to his custody. The application was dismissed by the learned Magistrate on the ground that it was for the District Collector to initiate action.

2. In the facts and circumstances of this case, I am satisfied that the police who took custody of the vehicle can be directed by the learned Magistrate to release the vehicle subject to appropriate terms and conditions. I take that view because though admittedly the seizure has taken place on 10/02/2007, no action has been initiated by the District Collector so far. Any

court must remind itself of the dictum in Sunderbhai Ambalal Desai v. State of Gujarat [SC 2003(2) KLT 1089]. It must be the endeavour of all courts to ensure that property is not subjected to unnecessary damage and deterioration merely because they are involved in the alleged commission of offences. No other claimants appear to have staked a claim for the vehicle. In these circumstances, I am satisfied that this Criminal Miscellaneous Case can be allowed subject to appropriate conditions.

3. In the result, this Criminal Miscellaneous Case is allowed. The impugned order is set aside. The learned Magistrate is directed to release the vehicle to the petitioner on the following terms and conditions:

i) The petitioner shall execute a bond for an amount equal to the value of the vehicle to be assessed and determined by the learned Magistrate with two solvent sureties each for the like sum.

ii) In such bond to be executed, the petitioner and the sureties shall specifically undertake to pay such amount, as may be imposed by the District Collector, in accordance with and under the relevant provisions of law.

iii) The petitioner shall produce all documents before the learned Magistrate to show that he is the person entitled to possession of the vehicle.

iv) The petitioner shall ensure that the vehicle is not used for any unlawful purpose while it is in his possession, in pursuance of this order.

Hand over copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006